IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

CRP.No. 830 of 2007()

CMA.57/2006 of DISTRICT COURT, THODUPUZHA
OS.450/1999 of MUNI-MAGI.COURT,THODUPUZHA
(IA 308 2006)

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REVN. PETITIONER: APPELLANT/PETITIONER/DEFENDANT:

ANTHONY GEORGE,
MADATHILACKAL VEEDU, SEAVIEW WARD,
ALAPPUZHA VILLAGE.

BY ADV. SRI.P.RAVINDRAN

RESPONDENT: RESPONDENT/CR.PETITIONER/PLAINTIFF:

N.P. GOPINATHAN NAIR,
VYSAKH VEEDU, KAPPUKARA, MANJALLOOR VILLAGE,
MOOVATTUPUZHA.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.830 OF 2007

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Dated this the 20th day of September 2007

ORDER

This revision petition is filed to set aside the judgment passed by the District Judge, Thodupuzha in C.M.A.No.57/2006. It was an application filed by the defendant for setting aside the ex parte decree with a petition to condone the delay of 6 years and 12 days. The trial court as well as the appellate court held that there are no grounds to condone the delay and therefore dismissed the applications.

2. Before considering the facts, it is better to state the principles to be followed in these type of cases. This court in the decisions reported in ***Sreedhara Kurup v. Mickel (1968 KLT 599)*** and ***Plantation Corporation of Kerala Ltd. v. Hussain (1998(1) KLT 1008)***had held that the broad principles of natural justice demand that an opportunity should be given to the party to put forth the case on merits unless there is gross negligence and grave misconduct. The first ground alleged is that after the receipt of summons the petitioner had entrusted the Superintendent of the estate to engage a Lawyer for conducting the case. According to him, it was not

done by him. When a case is instituted, it is the duty of the defendant to find out what has happened to the case. Entrusting it to somebody, that too, without any evidence and blaming somebody else for the laches cannot be taken as a bona fide ground. It c an also be seen that though he came to know about the decree in 2004 it took him another 2 years to file an application for setting aside the ex parte decree. I feel there is gross negligence and grave misconduct on the part of the defendant. It is also a settled principle of law that when a right has accrued in favour of a person, judicial discretion shall not be exercised so light heartedly so as to put the winning party in to a loosing position. I do not find any reason to condone the delay. Therefore C.R.P. is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-